

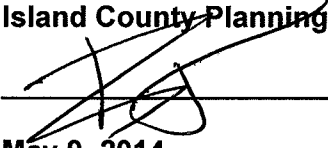


## ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

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**TO:** Island County Planning Commission

**FROM:**  Brad Johnson, Senior Planner

**DATE:** May 9, 2014

**SUBJECT:** Fish and Wildlife Habitat Conservation Areas Update

### Commissioners:

On January 25, 2013 the Washington State Growth Management Hearing Board (GMHB) issued an order (GMHB 12-2-0016) requiring Island County to review and update its Comprehensive Plan and development regulations for Fish and Wildlife Habitat Conservation Areas by July 24, 2013. The GMHB subsequently extended this deadline to July 24, 2014. To address this order, Island County retained a consulting team led by the Watershed Company to review best available science, perform an audit of existing fish and wildlife protection standards, identify any changes necessary to comply with the Growth Management Act, and develop revised code language and comprehensive plan policies.

In April of this year the consulting team completed their work by submitting a Best Available Science Report, Code Audit, and proposed changes to the Island County Comprehensive Plan and Island County Code. Planning and Community Development then presented this information to the Planning Commission at workshops held on March 25, 2014 and April 8, 2014. Planning and Community Development also held a number of public open houses in Freeland, Coupeville, Oak Harbor, and on Camano Island. As a result of these workshops a number of concerns were expressed by citizens and advocacy groups. A summary of these issues, along with an explanation of any changes the Planning Department has made to address these concerns has been provided below.

### Concerns:

*The standards governing existing structures and uses in Fish and Wildlife Habitat Conservation Area buffers limit exempt reconstruction to fifty percent of the area of the original structure in any three year period. Such a restriction would prohibit, or require a permit for simple repairs, such as residing and reroofing.*

The existing uses provisions of the code update were not intended to be this restrictive. Planning and Community Development agrees that such a restriction could prove unworkable and burdensome for property owners; accordingly, we have amended this section so that it now limits exempt repairs to fifty percent of the value of the original structure in any three year period. This achieves the goal of prohibiting new structures from being erected without critical areas permit approval, while providing owners of existing structures with the ability to perform routine maintenance and upgrades without having to obtain a critical areas permit.

*The draft code appears to provide the Planning Director with the authority to require "Exemption Authorizations" for any proposed use at their discretion. Such a provision would reduce the certainty of land owners and agricultural operators with respect to permit requirements, and could impose a costly burden on farmers.*

In order to address this concern, the draft code has been amended to clearly state that no permit is required for activities which are expressly listed as being exempt. In addition, the code requirements which describe the circumstances under which a permit is required have been consolidated and clarified. The code now expressly states when a permit is required and when it is not, and further specifies the type of permit that would be required.

*The draft regulations would not exempt maintenance of modified stream channels and artificial drainage features from permit requirements when these features are used by salmonids or carry re-routed stream waters. This is a concern because many modified streams are used and maintained by agricultural operators as drainage facilities.*

This concern is understandable; however, there is simply nothing in State law that would exempt Island County from its GMA obligation to provide "special protection to anadromous fish". This obligation extends to all areas which are necessary to support and sustain fish populations. Allowing unregulated work to occur in salmon bearing streams, or naturally occurring waters which flow into salmon habitat, would not be consistent with GMA requirements and could result in successful challenges before the Growth Management Hearings Board.

#### Final Documents:

Attached you will find the following documents:

1. Draft code changes, as submitted by the consulting team, reformatted to be consistent with the code format used by the Island County Code Reviser. This documents differs from the one presented at the last Planning Commission Hearing in that it has been reformatted and renumbered; however, no substantive changes have been made.
2. Draft code changes reflecting additional changes made by Planning Department staff to address public comments and concerns expressed by the Planning

Director. This documents shows where changes have been made to the document previously submitted to the Planning Commission (but in Island County Code format) in underline and strike-through format. These changes are generally minor, and were intended to ensure the use of consistent language and regulatory structure throughout the Island County Code; however, several significant changes have been made. The definitions section was moved to the front of the document to improve readability, and the sections describing the authority of the Planning Director and Hearing Examiner were eliminated. These sections were unnecessary, as this information is already covered by Island County Code in Chapter 16.19. Finally, the section dealing with the relationship between this section of code and the Island County Shoreline Master Program was significantly revised. This section previously contained a list of redundant or unenforceable policies and regulations. It was revised to clearly define which regulations apply and when.

3. Draft code changes reflecting changes made by Planning Department Staff without underline strike-through formatting marks. This document is intended to be adopted as a new Chapter in Island County Code.
4. Draft Comprehensive Plan changes in underline and strike-through format.
5. Public Comments received by mail or email.
6. Sign-In sheets from public meetings.
7. Proposed Findings of Fact.

In addition to the documents listed above, Planning and Community Development is actively working to prepare revisions to other titles and chapters of the Island County Code necessary to implement the updated Fish and Wildlife Habitat Conservation Areas regulations. These change will include changes to Chapter 16.19, Land Use Review; Chapter 17.03, Zoning; as well as Chapters 17.02 and 17.02A, Critical Areas. Due to the complexity involved in preparing these revisions, Planning and Community Development is requesting that the Planning Commission continue its March 13<sup>th</sup> meeting and reconvene on March 27<sup>th</sup> in order to provide our office with an opportunity to prepare these documents, and to address any changes requested by the Planning Commission

- Enc:
1. Code Changes (reformatted with no substantive changes)
  2. Code Changes (with substantive changes) in underline and strike-through format
  3. Proposed Code Changes for adoption with no editing marks
  4. Proposed Changes to the Comprehensive Plan
  5. Public Comments
  6. Sign-In sheets from public meetings
  7. Proposed findings of fact.